Undaunted, Lush. Adm. Rep. 90; *The Melpomene*, L. R. 4 Adm. 129; *The Sabine*, 101 U. S. 384, 390 (*semble*). For ease in administration, whether or not in fact a request indicates one of the three situations above enumerated, is not gone into. Normally it does. In the cases cited the failure to succeed was due to accident, storm, or the like. If due to wilful abandonment salvage is not allowed. *The Algitha*, 17 Fed. 551 (D. Md.). *Cf. The Henry Steers, Jr.*, 110 Fed. 578 (E. D. N. Y.). The case of dismissal, if not for misconduct, seems assimilable to the former rather than to the latter class of cases. The principal case, therefore, is sound. *The Maude*, 3 Asp. Mar. L. Cas. 338. See KENNEDY, CIVIL SALVAGE, 2 ed., 41.

SPECIFIC PERFORMANCE — PARTIAL PERFORMANCE WITH COMPENSATION — REFUSAL OF WIFE TO JOIN IN DEED TO COMMUNITY PROPERTY. — The plaintiff contracted to transfer land worth $15,000 to the defendant, who in return was to assume a mortgage of $6000, and deliver notes to the amount of $4000 and a deed to lots valued at $5000. All the land in question was community property, which by statute the husband cannot convey unless the wife join in the deed. (1919 IDAHO COMP. STAT., c. 184, § 4666.) The plaintiff tendered a deed duly executed by himself and wife. The defendant, whose wife would not join in a deed, refused to accept the conveyance. The trial court ordered that the defendant perform within thirty days, or that judgment for $9000 be entered against him. *Held*, that the judgment be reversed. *Childs* v. *Reed*, 202 Pac. 685 (Ida.).

The decision cannot be supported upon the ground that there is absence of mutuality of remedy. The defendant can be amply protected by a decree which is conditional on the plaintiff's performance. *Logan* v. *Bull*, 78 Ky. 607, 617. *Cf. Mullens* v. *Big Creek, etc. Iron Co.*, 35 S. W. 439, 442 (Tenn. Ch. App.). See 16 HARV. L. REV. 72; 34 HARV. L. REV. 336. But the case may be supported upon another ground. Since the sale was not executed, at law the plaintiff can recover not the value of his land but merely damages for the breach of contract. *Bensinger* v. *Erhardt*, 74 App. Div. 169, 77 N. Y. Supp. 577. See 3 WILLISTON, CONTRACTS, § 1399. *Contra, Gray* v. *Meek*, 199 Ill. 136, 64 N. E. 1020. The trial court must, then, have proceeded on a theory of specific enforcement with compensation. Such relief would subject the defendant to an affirmative liability which was never contemplated; it would be a remaking of the contract on a much more elaborate scale than is done in cases where a vendor is compelled to remit a portion of the purchase price. See *Sternberger* v. *McGovern*, 56 N. Y. 12. See also 25 HARV. L. REV. 731. But see *Mundy* v. *Irwin*, 20 N. Mex. 43, 145 Pac. 1080. Furthermore, the plaintiff, to satisfy the judgment against the husband, might levy execution upon the very land which the wife refused to convey. *Holt* v. *Empey*, 32 Ida. 106, 178 Pac. 703. The policy of the statute which requires her consent to a conveyance of community property would seem to forbid that she be subjected to the strong indirect pressure which a money judgment would involve. *Cf. Riesz's Appeal*, 73 Pa. St. 485.

STATUTES — INTERPRETATION — ENLARGING THE SCOPE OF ONE STATUTE TO CONFORM WITH THE POLICY OF ANOTHER. — A mother sued under a statute for the negligent killing of her illegitimate child. (1911 MD. ANN. CODE, Art. 67, §2.) Another statute gave mutual rights of inheritance to a mother and her illegitimate children. (1911 MD. ANN. CODE, Art. 46, § 30.) The defendant demurred. *Held*, that the demurrer be sustained. *Smith* v. *Hagerstown & Frederick Ry. Co.*, 114 Atl. 729 (Md.).

The word "child," both at common law and as used in death acts, is a word of art meaning "legitimate child." *Dickinson* v. *Northeastern Ry Co.*, 2 H. & C. 735, 9 L. T. R. 299; *McDonald* v. *Pittsburgh, C. C. & St. Louis Ry.*

Co., 144 Ind. 459, 43 N. E. 447; *Alabama & Vicksburg Ry. Co.* v. *Williams*, 78 Miss. 209, 28 So 853 Some courts have held that a statute giving mutual rights of inheritance to an illegitimate child and its mother manifests a broad policy or the legislature to abridge the legal distinction between legitimate and illegitimate offspring, and have accordingly enlarged the sense of the death statute to include the case of the illegitimate child. *Marshall* v. *Wabash R. R. Co.*, 120 Mo. 275, 25 S. W. 179; *Security Title Co.* v. *West Chicago R. R. Co.*, 91 Ill. App. 332. The argument is that statutes should be construed as beneficially as possible and that the courts should hesitate to restrict the scope of progressive legislation. See SEDGWICK, STATUTORY CONSTRUCTION, 2 ed., 308, 311. See Roscoe Pound, "Common Law and Legislation," 21 HARV. L. REV. 383, 407. But incapacity to inherit is only one consequence of illegitimacy. It would not, therefore, seem proper to find in a statute aimed at this evil an expression of general policy which would justify the court in enlarging the scope of the death act. *Atkinson* v. *Anderson*, 21 Ch. 100. See *Commonwealth* v. *Herrick*, 6 Cush. (Mass.) 465. The harsh result of the principal case is unavoidable. *Robinson* v. *Georgia Railroad, etc. Co.*, 117 Ga. 168, 43 S. E. 452.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — FEDERAL AGENCY: STATE TAXATION OF INCOME FROM LEASES OF INDIAN LANDS. — By statute Oklahoma taxes the entire net income of every person in the state from whatever source derived, except such as is exempt by some law of the United States or of the state. (1915 OKLA. SESSION LAWS, c. 164.) The defendant was an instrumentality used by the United States to carry out its duties to the Indians. Proceedings were instituted under the statute to hold the defendant liable for the net income which he derived as lessee of restricted Indian lands. *Held*, that the tax is invalid. *Gillespie* v. *Oklahoma*, U. S. Sup. Ct., Oct. Term, 1921, No. 322.

Where a state purports to levy a tax on income derived from interstate commerce, a distinction is taken between a tax on gross and one on net income. The former is in reality an excise upon the act of engaging in interstate commerce and therefore prohibited. See Thomas R. Powell, "Indirect Encroachment on Federal Authority," 32 HARV. L. REV. 374, 377. But a tax on net income may be upheld as a property tax on the net income itself. *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321. In the principal case, it was argued that whereas in previous cases invalidating taxes on income derived from Indian lands, the taxes had been on gross income, the present tax should, by analogy, be upheld. But property engaged in interstate commerce is subject to state taxation. *Marye* v. *Baltimore & O. R. R. Co.*, 127 U. S. 117, 123; *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18. On the other hand, the leases from which the present income was derived are not. *Indian Territory Illuminating Co.* v. *Oklahoma*, 240 U. S. 522. This differentiates the cases, for where property from which income is derived is not taxable, the income itself must be exempt. *Opinion of the Justices*, 53 N. H. 634; *State Bank* v. *Commonwealth*, 9 Bush. (Ky.) 46. *Cf. Peck & Co.* v. *Lowe*, 247 U. S. 165; *Weston* v. *City Council of Charleston*, 2 Pet. (U. S.) 449. The court was, therefore, correct in refusing to follow the supposed analogy.

TAXATION — WHERE PROPERTY MAY BE TAXED — INCOME — EFFECT OF CHANGE OF DOMICIL. — A was domiciled in New York until January, 1918, when she acquired a domicil in Massachusetts. An income tax was assessed and collected in Massachusetts based on a return showing the income A had received in 1917. She brings proceedings for abatement on the ground that it was beyond the jurisdiction of Massachusetts to levy the tax. *Held*, that